Supreme Court, U.S.
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No. 86-1419

In the Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF OREGON, DEPARTMENT OF HUMAN RESOURCES; RICHARD C. LADD,

Petitioners,

v.

COOS BAY CARE CENTER, an Oregon Corporation, Guardian Ad Litem; HANNAH SCHWANKE, Guardian Ad Litem for David and Steven Schwanke; and SANDY MAUER, Guardian Ad Litem for Tami Mauer,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 2, 1987
CERTIORARI GRANTED MAY 4, 1987

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Affidavit of Robert Decker in Opposition to Motion to Dismiss 17

The following opinion, order and findings and recommendations have been omitted in printing this appendix, because they appear on the following pages of the printed petition for certiorari:

Opinion of the Ninth Circuit Court of Appeals, dated November 3, 1986 ..... App-1

Order of the United States District Court, dated July 10, 1985 ..... App-7

Findings and Recommendations of Federal Magistrate, dated April 8, 1985 ..... App-9

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Apr. 27, 1984—Plaintiffs' Complaint for Breach of Contract; Violation of Federal Constitution and Statutes; Class Action and Demand for Jury Trial filed in the United States District Court for the District of Oregon.

June 24, 1984—Defendants' Fed. R. Civ. P. 12 Motions filed in the United States District Court for the District of Oregon.

July 31, 1984—Plaintiffs' Affidavit of Robert Decker in Opposition to Motion to Dismiss.

Apr. 8, 1985—Federal Magistrate's Findings and Recommendations issued recommending dismissal of plaintiff's claims.

July 10, 1985—Order and Judgment of the United States District Court for the District of Oregon.

July 24, 1985—Plaintiffs filed Notice of Appeal in the United States Court of Appeals for the Ninth Circuit.

Nov. 3, 1986—Opinion of the United States Court of Appeals for the Ninth Circuit.

Mar. 2, 1987—Defendants' Petition for Writ of Certiorari filed.

May 4, 1987—Certiorari granted.

RESPONDENTS' COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OREGON

[List of attorneys omitted in printing]

COOS BAY CARE CENTER, an Oregon corporation, (Guardian Ad Litems); HANNAH SCHWANKE, Guardian Ad Litem for David and Steven Schwanke; and SANDY MAUER, Guardian Ad Litem for Tami Mauer, on their own behalf and on behalf of a similarly situated class of individuals,	Case No. _____
Plaintiffs,	COMPLAINT FOR BREACH OF CONTRACT; VIOLATION OF FEDERAL CONSTITUTION AND STATUTES; CLASS ACTION AND DEMAND FOR JURY TRIAL
vs.	
STATE OF OREGON, DEPARTMENT OF HUMAN RESOURCES; RICHARD C. LADD in his official capacity as Administrator of the Senior Services Division of the Department of Human Resources,	
Defendants.	

COME NOW, Plaintiffs, by and through their attorneys of record, PARKINSON, LOJEK & PENLAND, CHARTERED, and HARLAND, RITTER, SAALFELD & GRIGGS, and for their cause of action against the Defendants, complain and allege as follows:

1. Plaintiff, Coos Bay Care Center, Inc., is an Oregon corporation with its principal place of business in Coos Bay, County of Coos, Oregon.

2. The named Plaintiffs are Hanna Schwanke and Sandy Mauer, Guardians Ad Litem, respectively, for David and Steven Schwanke and Tami Mauer, who are heavy care patients at the Coos Bay Care Center, Coos Bay, Oregon. All named Plaintiffs are Oregon residents.

3. Title XIX of the Social Security Act, as amended, commonly known as "Medicaid," provides for medical assistance to the indigent and developmentally disabled in the form of a cooperative program between each of the participating states and the United States of America.

4. Defendant, Department of Human Resources, pursuant to Oregon Revised Statutes 184.750 and 441.060, is an agency of the State of Oregon and is responsible for administering the Title XIX medical assistance program within the State of Oregon.

5. Defendant, Richard C. Ladd, is the person responsible for the administration of the State of Oregon, Department of Human Resources, and, at all material times hereto, has acted under color of state law.

6. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331. The Plaintiffs' claims arising under Oregon law as more particularly stated herein are within the pendent jurisdiction of the Court since they arise out of a common nucleus of facts with the federal claims presented herein and are of such a nature that the Plaintiffs would ordinarily be expected to try all such claims in one proceeding.

7. Coos Bay Care Center, Inc. is engaged in the principal business of providing long-term care to the developmentally disabled and to the aged.

8. Coos Bay Care Center, Inc. is a licensed Intermediate Care Facility under the laws of the State of Oregon and has been so licensed at all material times hereto.

9. Coos Bay Care Center, Inc. on the 5th day of May, 1982, entered into an agreement with the Defendant State of Oregon, Department of Human Resources, Senior Services Division, for providing care under the Oregon Title XIX medical assistance program as an Intermediate Care Facility. A copy of the aforesaid agreement between Plaintiff, Coos Bay Care Center, Inc., and the Defendants is attached to this Complaint as Exhibit "A".

10. Plaintiffs David and Steven Schwanke and Tami Mauer are third party beneficiaries of this agreement and may maintain an action upon it.

11. The aforesaid agreement, *inter alia*, compels Coos Bay Care Center, Inc., (provider) and the Defendants to comply with applicable federal regulations as more particularly set forth at 42 C.F.R. § 442.300 and 42 C.F.R. § 442.250 and other regulations, as adopted.

12. The aforesaid agreement further obligates the Defendants to make payments to the provider in accordance with all federal and Oregon Administrative Rules applicable to Intermediate Care Facilities under the Title XIX Long-Term Care Facility Services Program existing within the State of Oregon.

13. The Title XIX program is established by the Social Security Act, as amended, 42 U.S.C. § 1396a *et seq.* and Oregon has chosen to participate therein. This program makes the State of Oregon responsible for the administration of state funds and the federal contribution under Title XIX of the Social Security Act, as amended.

14. Oregon has established a Medical Assistance Program (Medicaid) within the State which compels compliance with the State's own statutory terms and conditions thereof as well as all applicable regulations promulgated by the Department of Health and Human Services of the United States of America.

15. 42 U.S.C. § 1396a(a)(13)(A), particularly, provides that the state plan adopted by each state must contain

assurances satisfactory to the Secretary of the Department of Health & Human Services that established rates of reimbursement to participating medicaid providers are determined in accordance with methods and standards developed by the state and are reasonable and adequate to meet the costs which must be incurred by those providers who are efficiently and economically operated as they provide care and services in conformity with applicable state and federal laws, regulations and quality and safety standards.

16. Further, 42 C.F.R. § 447.252(a) provides that the single state agency responsible for administering the medicaid program within that state must pay for long term care rendered under the medical assistance program at a level which is sufficient to meet the costs which must be incurred by an efficiently and economically operated long term health care facility.

17. Additionally, § 411-70-030, of the Department of Human Resources, Senior Services Division, Nursing Facility Services Guide for Title XIX Medical Assistance Programs, provides, *inter alia*, for specific and complete reimbursement for provision of heavy cost care.

18. "Heavy care" patients are those who, by virtue of their medical or developmental problems, require significantly more or greater care than does the ordinary intermediate patient.

19. The heavy cost rates must include and reimburse for all nursing staff services, food or food substitutes, dressings, catheters and other special supplies as detailed in Rules 411-70-085 and 411-70-090.

20. The heavy cost rate does not include certain medical services as stated in Regulation 411-70-030(7)(a). Heavy cost care patients may be eligible under this rule and covered by rates for reimbursement in accordance with the rule.

21. There are now and have for some time been a number of patients at the Coos Bay Care Center, and at other similar

institutions within the State of Oregon, who are eligible for heavy cost care.

22. Patients at Coos Bay Care Center have been duly certified by physicians who have executed a Heavy Care Assessment and who have certified that the needs of the patient conform to the aforesaid rules and regulations of the Senior Services Division of the Department of Human Resources, State of Oregon.

23. In spite of the qualification of the patients, the State of Oregon and Defendant Richard C. Ladd, acting under color of state law, have developed an unconstitutional de facto policy procedure, custom and usage of consistently and repeatedly refusing to pay the cost of the heavy care patients to and on behalf of the Plaintiffs, thus denying them due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America and resulting in a taking of property for public use without just compensation. Accordingly, the Plaintiffs' wards, David and Steven Schwanke and Tami Mauer, and the class they represent do not receive the quantity or quality of care guaranteed to them constitutionally and by state and federal laws, statutes and regulations as aforesaid, although Plaintiff Coos Bay Care Center does afford "heavy care" patients as much "heavy care" as possible.

24. Throughout the State of Oregon there are other heavy care patients residing within long-term health care facilities who similarly qualify for heavy care but who do not receive the full amount of appropriate care because of the refusal of the Defendants to appropriately reimburse health care providers for such care.

CLASS ACTION ALLEGATIONS

25. Plaintiffs therefore bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all other residents of licensed long term health care facilities within the State of Oregon who, as a

result of Defendants' actions, or non-action, have not been granted full medical assistance commensurate with their status as heavy care patients as more particularly described below.

26. The number of heavy care patients in the Plaintiff class is so numerous that the joinder of all members of the class is impracticable. Upon information and belief, the named Plaintiffs aver that the number of heavy care patients in the proposed class exceeds 100 patients, statewide.

27. The claims of the representative Plaintiffs are typical of the Plaintiff class and arise out of identical facts constituting the unlawful conduct of the Defendants. The representative Plaintiffs will fairly and adequately protect the interests of the Plaintiff class.

28. This action may be maintained as a class action pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure since Defendants have acted and refuse to act on grounds generally applicable to the Plaintiff class, thereby making appropriate final declaratory relief with respect to the class as a whole.

29. This action may be maintained as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure since the questions of law and fact common to the claims of the Plaintiff class and resulting from Defendants' actions predominate over any questions affecting only individual members. The successful assertion of the claims of the named Plaintiffs necessarily establish determinations of fact and law adequate to prove the unlawful actions of Defendants, thereby making a class action superior to any other available method for the fair and efficient adjudication of the claims of the named Plaintiff class.

FIRST CAUSE OF ACTION

30. Plaintiffs hereby incorporate and reallege paragraphs 1 through 29 in this paragraph as if fully set forth herein.

31. The aforesaid course of conduct by the Defendants violates 42 U.S.C. § 1396a *et seq.* and 42 C.F.R. § 447.252.

32. As a direct and proximate result of the violation of these statutes and regulations the Plaintiffs have been damaged in the approximate amount of $138,600.00 and will continue to be irreparably damaged in the amount of the differential between the heavy cost care afforded and routine care.

SECOND CAUSE OF ACTION

33. Plaintiffs hereby incorporate paragraphs 1 through 29 in this paragraph as if fully set forth herein.

34. The aforesaid course of conduct by the Defendants constitutes a breach of contract by the Defendants.

35. As a proximate result of this breach of contract the Plaintiff Coos Bay Care Center has been damaged in the amount of $138,600.00 and will continue to be damaged on a daily basis. Plaintiffs Schwanke and Mauer and the class they represent will continue not to be afforded the full measure of heavy cost care to which they are entitled.

THIRD CAUSE OF ACTION

36. Plaintiffs hereby incorporate paragraphs 1 through 29 in this paragraph as if fully set forth herein.

37. The aforesaid course of conduct by the individual Defendants constitutes a violation of 42 U.S.C. § 1983 in depriving the Plaintiffs of their constitutional rights under the Fourteenth Amendment of the United States Constitution and their statutory rights, both state and federal, as aforesaid.

38. As a proximate result of the violation of Plaintiffs' constitutional rights, Plaintiff Coos Bay Care Center has been damaged in the amount of $138,600.00 and Plaintiffs Mauer, Schwanke and each member of the class they represent have been damaged in the amount of $10,000.00.

39. Plaintiffs hereby claim all necessary and proper attorney's fees in accordance with 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs pray for relief as follows:

1. For a declaratory judgment of this Court that those medicaid patients in Oregon long term health care facilities who are certified as heavy care patients be recognized as such by the State of Oregon in accordance with the rules and regulations of the State of Oregon and the United States, Department of Health & Human Services, and that those long-term health care facilities who provide care to such patients be reimbursed appropriately.

2. For a further order from this Court to direct the Defendants to conform to the aforesaid Federal statutes and regulations in their reimbursement methodology in the administration of the Medicaid program.

3. For a further declaratory judgment that the agreement between Plaintiff Coos Bay Care Center and the State of Oregon has been breached by the State and that the Plaintiffs have been and are being damaged thereby.

4. For an injunction prohibiting the Defendants from violating federal and state law, as alleged.

5. For damages pursuant to 42 U.S.C. § 1983, in the amount of $138,600.00 to Plaintiff Coos Bay Care Center which represents the lack of appropriate reimbursement from May 26, 1982, to the date of judgment, and for an award of $10,000.00 each to the other named Plaintiffs and to each member of the class they represent.

6. For Plaintiffs' attorney's fees, costs and expenses reasonably incurred in bringing this cause of action pursuant to 42 U.S.C. § 1988 and the Federal Rules of Civil Procedure.

7. For such other and further relief as to this Court seems just.

Dated this 27th day of April, 1984.

[Signatures omitted in printing]

INTERMEDIATE CARE FACILITY AGREEMENT
[filed June 10, 1981]
[letterheads omitted in printing]

This Agreement is between the Department of Human Resources of the State of Oregon, through the Senior Services Division, hereinafter referred to as Division and

Coos Bay Care Center, Inc.
2625 Koos Bay Boulevard
Coos Bay, Oregon 97420

hereinafter referred to as Provider.

INTRODUCTION

Pursuant to ORS 184.750 and ORS 441.060, the Department of Human Resources, through AFS Division, is the agency responsible for administering the Title XIX Medical Assistance Program in Oregon. By Agreement the SSD Administers the Title XIX Long-Term Care Services Program.

Section 1902 (a)(27) of Title XIX of the Social Security Act requires a State to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance.

To participate in the Oregon Title XIX Medical Assistance Program, an Intermediate Care Facility must: (1) be licensed as a nursing home or hospital under the laws of Oregon; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a licensed nursing home administrator who holds a current license or by a hospital administrator; and (4) meet on a continuing basis federal standards for participation in the Title XIX Medical Assistance Program.

Provider has filed an application with the State Health Division to provide, as a [*sic*] Intermediate Care Facility, health-related care and services to any and all persons eligible for the Title XIX Medical Assistance Program. The application is attached hereto and made a part of this Agreement.

All conditions apply to recipients who are receiving assistance under the General Assistance Program.

I. PROVIDER AGREES TO:

A. Comply with all Oregon Administrative Rules And State Statutes applicable to Intermediate Care Facilities under the Title XIX Long-Term Care Facility Services Program;

B. Comply with all applicable regulations as stated in the Title XIX Social Security Act and amendments thereto;

C. Inform Division promptly when individuals covered under the Title XIX Program are admitted to and discharged from the Intermediate Care Facility;

D. Notify Division immediately of any change in operating license issued by the State Health Division;

E. Respect the observance of religious beliefs of all Title XIX patients;

F. Provide cooperative methods and procedures relating to the utilization of care and services available as may be necessary to safeguard against unnecessary utilization of such care and services;

G. Submit annual cost statements within the time limits, using the forms and instructions specified in the Title XIX Long-Term Care Facility Services Guide.

H. Submit billings for SSD clients showing correct resident day counts, resident income, and payment rates.

I. Make available to appropriate State and Federal personnel at all reasonable times all necessary records, retain medical records for a minimum of seven years, and financial records for a minimum of three years from the date all audit questions have been resolved. Records will include at least the following:

1. Records as required by Section 1905 (c) and (d) of Title XIX of the Social Security Act, and any amendments thereto;

2. Records of all treatments, drugs, and services for which provider payments are to be made under the Title XIX Program, including the authority for and the date of administration of such treatment, drugs, or services; and

3. All other records as may be found necessary by the Division in compliance with any Federal or State

law, rule, or regulation promulgated by the United States Department of Health and Human Services, or by the Division.

J. Accept payment from the Division as payment in full for those services, goods and products included in the all-inclusive per diem rate, with the understanding that:

Whosoever knowingly and willfully: (1) charges for any such service, goods or products in excess of the all-inclusive per diem rate established by the Division; or (2) charges, solicits, accepts or receives, in addition to the amount paid by the Division, any gift, money, donation or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident) as a precondition of admitting a resident to an intermediate care facility, or as a requirement for the resident's continued stay in such a facility, shall be quilty [*sic*] of a (federal) felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years or both.

K. No individual will be employed in a management or supervisory capacity who has been convicted of a criminal offense involving Medicaid or Medicare laws, rules or regulations;

L. Meet conditions for participation as an Intermediate Care Facility required by Federal Regulations 42 CFR 442.300 meet the definition of an Intermediate Care Facility as set forth under 42 CFR 442.252; and meet 42 CFR 442.311 relating to patients rights and protection of patient funds.

II. DIVISION AGREES TO:

A. Make payments to the Provider in accordance with all Oregon Administrative Rules applicable to Intermediate Care Facilities under the Title XIX Long-Term Care Facility Services Program, as soon as feasible after a proper claim is submitted and approved.

B. Give Provider reasonable notice of any impending change in status under the Title XIX Medical Assistance Program.

III. PROVIDER AND DIVISION MUTUALLY AGREE THAT:

A. Both Provider and Division are discharged from further obligation created under terms of this Agreement, except for equitable settlement of respective accrued interests up to date of the termination, if federal and/or state laws are amended, repealed, or judicially interpreted so as to render fulfillment of this Agreement on the part of either party infeasible or impossible;

B. The term of this Agreement shall be in accordance with the certification by the State Health Division.

C. This Agreement may be terminated by mutual consent of the Division and the Intermediate Care Facility, or by written 30-day notice by either party;

D. If the Intermediate Care Facility certification is voluntarily or involuntarily terminated, the Division agrees to remove all Title XIX residents from the decertified beds provided that the facility has secured prior consent to removal from the residents and/or their responsible relatives. Removal is to be completed within 30 days of the termination of this Agreement. In the event of voluntary or involuntary termination of this Agreement, in those cases where consent has not been obtained, The Division will assist in removing clients upon request by The Provider or residents. In all cases, however, the Division will discontinue payment for Title XIX Intermediate Care Facility services no later than 30 days subsequent to the termination of this Agreement;

E. Provider and Division mutually agree that if the Health Division has notified the Division in writing that a facility is deficient in areas relating to patient care and the Health Division has made a termination of potential decertification (see Rule 461-17-090), this Agreement will be modified by the Division for the period determined by the Health Division that the facility is in a status of potential decertification. Modification of the Agreement will be limited to making no payment for residents admitted to the facility or who become eligible for assistance while in

the facility during the period of potential decertification;

F. Comply with Title VI, Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973;

G. This agreement shall not be transferable or assignable;

H. This Agreement is contingent upon the Provider correcting deficiencies in accordance with the written Plan of Correction submitted by Provider to the State Health Division and approved by that agency;

I. Conviction of the owner, or anyone having an ownership interest in the facility, or a criminal act involving Medicaid or Medicare laws, rules or regulations will be grounds for termination of this Agreement by the Division;

J. Any breach or violation of any of the foregoing provision shall make this Agreement subject to immediate concellation;

K. Division may withhold payment as necessary because of violation of this Agreement until the violation can be remedied;

L. Provider, by entering into this Agreement, does not waive any right to contest the legality and validity of any statutes, regulations, and rules established by the Federal Government, State Health Division, Senior Services Division, any SSD branch office, State of Oregon, or any other governmental or private entity.

This Agreement remains in effect until: December 31, 1983.

This Agreement shall not become effective until approved by the Senior Services Division, State of Oregon.

[Signatures omitted in printing]

Addendum to Agreement
for
Participation in the Title XIX Heavy Cost Program

Notwithstanding the provisions of that Agreement, it is further agreed and understood between Oregon State Senior Services Division (SSD) and,

Coos Bay Care Center, Inc.
2625 Koos Bay Boulevard
Coos Bay, Oregon 97420

hereinafter designated as Facility, as follows:

Senior Services agrees to pay Facility a special daily rate established by Division for the care of individuals identified by Division as eligible for 'heavy cost' care. The client must occupy a bed certified by the State Health Division and covered by an agreement with the Division. The 'heavy cost' payment for an eligible individual is in effect for a period specified by Division and extension will be re-assessed as determined by Division. The Facility agrees to provide supplies and services included in the all-inclusive rate, as specified in the Title XIX Long-Term Care Facility Services Guide. In addition, the facility will provide all exceptional nursing or personal services as required based on an assessment by the Division. The 'heavy cost' rate does not include those medical services, i.e. physician, physical therapy, pharmacy, dental, etc., paid through Title XIX, Title XVIII, Veterans Administration, etc., and personal incidental items authorized for payment from the client's personal incidental allowance (see Rule 461-17-160).

The Facility will maintain detailed, complete and accurate records of the care provided and the costs of the care. Records of services and costs will be made available to the Division upon request.

The modification, cancellation or continuation of the arrangement set forth in this addendum will be the responsibility of Division to renegotiate with the Facility.

This addendum is in effect until December 31, 1983. contingent upon the nursing facility agreement remaining in effect for this period.

This addendum may be cancelled by either party giving 60 days notice to the other party of intention to do so.

[Signatures omitted in printing]

AFFIDAVIT OF ROBERT DECKER IN OPPOSITION TO MOTION TO DISMISS

[filed July 31, 1984]

[List of attorneys omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OREGON

[Title of case omitted in printing]

COMES NOW, ROBERT DECKER, and being first duly sworn upon his oath, deposes and says:

That he is one of the owners of the Coos Bay Care Center, Inc., plaintiff herein.

That your affiant has been involved in rendering services to the developmentally disabled since at least 1962.

That he is the former director of the Idaho State School and Hospital for the developmentally disabled in the State of Idaho and that he is the former assistant director of the State of Utah, State Training School for the developmentally disabled during the years 1962 to 1969.

That your affiant is extensively involved with intermediate care facilities for the developmentally disabled in his capacity as Executive Vice President of Chartham Management, Inc., headquartered in Salem, Oregon. The principal business of Chartham Management, Inc, is to provide management services to health care facilities in the Western United States.

Your affiant knows of his own knowledge that the Coos Bay Care Center has been managed by Chartham Management, Inc. and owned by the present ownership since April of 1982. At that time, there were heavy care patients who were being reimbursed at the same rate as intermediate care patients at the Coos Bay Care Center.

Heavy care patients, as defined in Section 411-70-030, *Oregon Guide for Title XIX, Medicaid Assistance Programs*, by virtue of their disabilities, require a significant amount of

health care, attention, feeding, grooming and other services which exceed that demanded by the normal intermediate care patient.

That since April of 1982 and with respect to the heavy care patients who were in the facility in April of 1982 and those who have been admitted since, your affiant has discussed the need for additional reimbursement for the care given and for the care required by these patients. These needs have been discussed many times with the defendant, Richard C. Ladd, with Mr. Joe Morgan, assistant director of mental health for the State of Oregon, Mr. Bob Zigan, assistant director of senior services division, State of Oregon and various members of their staff.

Your affiant has been advised repeatedly that although these patients do require heavy care, that there is no money available to meet these patients [*sic*] needs which would be indicated by federal law. Your affiant has been told by these Oregon State officials that it would be futile to pursue any type of administrative procedure or administrative remedy and that, in fact, no administrative procedures were available to your affiant or to his patients which could address this type of problem. Your affiant has further been told that no request for additional funding will be made by the State of Oregon for heavy care patients and, accordingly, your affiant has come to this Court for relief under the federal jurisdiction and pursuant to federal law.

Your affiant is unaware of any Oregon definition of "economy" or "efficiency" as those terms relate to costs necessarily incurred by a Medicaid provider of services who must comply with federal and state requirements. However, your affiant can state with certainty that however economy and efficiency are measured, the Coos Bay Care Center is not being reimbursed for its care of Medicaid patients at a rate sufficient to meet the costs which must be incurred by this

efficiently and economically operated provider in order to provide services pursuant to Title XIX and in conformity with applicable State and Federal laws, regulations and quality and safety standards. That is to say, the Coos Bay Care Center, in your affiant's opinion is very efficiently and economically operated, yet it is not being reimbursed by the State of Oregon at a rate sufficient to meet its costs.

Further your affiant sayeth not.

DATED This ___ day of _____, 1984.

[signatures and certification omitted in printing]

OPINION OF THE NINTH CIRCUIT COURT OF APPEALS

[Opinion set forth in full as Appendix A, pages App-1 to App-6 of the printed petition for certiorari]

ORDER OF THE UNITED STATES DISTRICT COURT

[Order set forth in full as Appendix B, pages App-7 to App-8 of the printed petition for certiorari]

FINDINGS AND RECOMMENDATION OF FEDERAL MAGISTRATE

[Findings and recommendation set forth in full as Appendix C, pages App-9 to App-15 of the printed petition for certiorari]